

Supreme Court, U. S.  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976  
No. 76-976

LEVAN BOUDTRE, et al.,

*Appellants,*

v.

STEPHEN BERGER, individually and as Commissioner of the  
New York State Department of Social Services, et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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**APPELLANTS' BRIEF IN OPPOSITION  
TO MOTION TO DISMISS OR AFFIRM**

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TO MOTION TO DISMISS OR AFFIRM

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Appellants submit this brief in opposition to the Motion To Dismiss or Affirm of Appellees Stephen Berger and The New York State Department of Social Services. Citations herein are to the Appendix of appellants' Jurisdictional Statement, (A-1 etc.).

I. The Justification For  
The Challenged Classification  
Asserted In Appellees' Motion  
To Affirm Is Invalid And  
Was Not A Basis Of The  
Decision Below

Appellees urge affirmance of the judgment below, contending that the majority properly applied the "rational basis" standard, sustaining the challenged statute after merely ascertaining that its purpose was to limit State expenditures. Appellees and the majority below assert that the rational basis

test requires only this inquiry. (A-8, ¶ 1).

If the rational basis test required only this inquiry, a welfare statute could, consistent with the equal protection clause, deny benefits to 'every third recipient on the welfare rolls.' The dissent below found the challenged work expenses ceiling "as arbitrary" as such a classification. (A-21). Perhaps aware that the standard of "minimum rationality" requires more, appellees argue that the statute is sustainable on another basis. Appellees assert that the statute "encourages economy and efficiency in employment" by forcing workers to hold down their work expenses.

Appellees assertion so departs from reality that the majority below did not

even comment on this purported justification, which appellees also urged upon them. However, the dissent rejected this purported justification stating:

If New York had been interested in eliminating unnecessary work expenses, it could have applied individual ceilings to the few items subject to employee control (as is presently the case with meals.) That the Statute applies to all items, including involuntary payroll deductions, unmistakably stamps it as a wholly arbitrary means of reducing benefits. Dissent, (A-39). (Emphasis added)

Appellant Roundtree's involuntary payroll deductions total \$88.66 monthly. These alone exceed the expense ceiling. Appellant-Intervenor Folsom's monthly involuntary payroll deductions amount to \$64.06, despite the fact that his income is so low that he pays no federal income tax. Dissent (A-16). While the ability of

the working poor to control other ordinary work expenses,<sup>1</sup> such as public transportation, is doubtful, it is beyond dispute that taxes, Social Security, union dues, permits, licenses, and other expenses are fixed costs. The only courses open to workers seeking to reduce taxes and Social Security assessments are to quit work, reduce work effort, avoid increased earnings, or commit welfare and tax fraud by taking a job which pays in cash and avoids mandated withholdings.

## II. The Work Expense Ceiling Is Neither A Flat Deduction Nor An Averaging Method For Computing Benefits

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<sup>1</sup>.These are all specifically enumerated and deductible as expenses incident to employment in 18 NYCRR §352.19(a). (A-51). They are fully deductible in New York's AFDC program and were fully deductible in the Home Relief program until 1971. (A-21, 22).

Appellees attempt to categorize the work expense ceiling as an averaging method or a flat deduction, akin to the measures sustained in Rosado v. Wyman, 397 U.S. 397 (1970) and Dandridge v. Williams, 397 U.S. 471 (1970). It is neither. New York does employ a flat grant in its Home Relief program, i.e., the statutory minimum subsistence level which all members of appellants' certified class live below. Appellees utilize a 1971 average as the basis of the expense ceiling, which is not a flat or fixed percentage deduction. The ceiling then operates to deprive appellants' class of the level of income provided as an outright flat grant to all unemployed recipients. (A-5, ¶ 2, A-11, ¶ 2). The statistical basis of the expense ceiling,

discussed at pages 26-28 of appellant's Jurisdictional Statement, led the dissenter to conservatively conclude that "it is doubtful that the present \$80 figure accurately reflects the work-related expenses of the average New York worker otherwise eligible for Home Relief." (A-19).

### III. The Court's Recent Decision In Knebel v. Hein Supports Appellants' Position

This Court's recent decision in Knebel v. Hein, 45 U.S.L.W. 4083 (January 11, 1977) fully supports appellants' position. In that case allowing a food stamp recipient to deduct the proceeds of a travel stipend would have discriminated against workers who did not receive such a stipend but incurred similarly non-deductible travel expenses. 45 U.S.L.W.

4085. In stark contrast, appellants are the only persons in New York, unemployed or working, denied the statutory subsistence level of income. Alleviation of the discrimination against appellants would merely raise their income to the level paid in outright grants to the unemployed, and would not introduce any new discriminations, as did the district court's order in Hein.

In Hein, this Court noted that the district court's order would result in "significant administrative costs" above those entailed in administering the Food Stamp Program's 10% deduction. 45 U.S.L.W. at 4085. The dissenter below noted that with the work expense ceiling, unlike a fixed percentage or flat deduction:

there is no gain in administrative efficiency since the \$80 figure is only a ceiling and the administering social services worker must still compute the actual amount of work expenses in each case. (A-23).

The Court's understanding of the discriminations inflicted upon the working poor by welfare classifications, exemplified by its reasoning in Hein, supports appellant's position.

#### CONCLUSION

The issue should be considered by the Court after full briefing and oral argument.

Respectfully submitted,

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